# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 361

Heard at Montreal, Tuesday, May 9th, 1972

Concerning

## TORONTO TERMINALS RAILWAY COMPANY

and

## CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

**DISPUTE:**

Claim on behalf of Mr. E. Moses, Fireman, because of an alleged violation of Articles 4.1, 4.9, 13.2.

**JOINT STATEMENT OF ISSUE:**

The regular assignment of Fireman E. Moses was abolished effective 8 July 1971. At about the same time, a bulletin was posted inviting applications for a temporary position of fireman, approximately 8 July to 31 October, vacation relief as and when required. Mr. Moses was the successful applicant.

Vacation relief was not required for firemen from 22 to 24 July nor from 30 July to 1 August inclusive, hence there was no work required of Mr. Moses' temporary position during those periods. The Brotherhood claims that, by making the two "breaks" in the temporary position, the Company violated Articles 4.1, 4.9, 13.2, and that consequently Mr. Moses should be compensated as though he had actually worked as a fireman from 22 to 24 July and from 30 July to 1 August. The Company declined to pay the claim.

| FOR THE EMPLOYEES: | FOR THE COMPANY: |
|---|---|
| (SGD.) J. A. PELLETIER | (SGD.) K. L. CRUMP |
| NATIONAL VICE-PRESIDENT | ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS |

There appeared on behalf of the Company:

| | |
|---|---|
| A. D. Andrew | – System Labour Relations Officer, Montreal |
| D. O. McGrath | – System Labour Relations Officer, Montreal |
| K. Coghlan | – Supervisor of Construction & Maintenance, Toronto |

And on behalf of the Brotherhood:

| | |
|---|---|
| R. J. Roussel | – Representative, Toronto |
| J. A. Pelletier | – National Vice-President, Montreal |
| H. Dickler | – Local Chairman, Toronto |

## AWARD OF THE ARBITRATOR

In the job bulletin on which the grievor applied it was made clear that the job was a temporary one, to last for the period July 8 to October 31, 1971, approximately. It was stated that it was for "Vacation relief as and when required", the relief days and hours to be those of the position filled. The grievor applied for this position, the commencement of which seems to have coincided with the abolition of his own regular assignment There is no issue in this case relative to the grievor's former assignment or its abolition. He was awarded the temporary position for which he had applied and worked at it, apparently throughout most of the period contemplated.

As noted in the joint statement of issue, there were two "breaks" during the period in question when no vacation relief was required. It is for those periods that the grievor seeks compensation. It was suggested to the grievor that he could exercise his seniority to fill some other position during those periods, and he did so for the second such period. Whether he was properly entitled to exercise seniority in those circumstances is not in issue here; the question here is whether the Company ought to have retained him in the bulletined positions, or at least paid him as such, during the two "breaks".

Article 4.1 of the collective agreement, referred to in the claim, provides that eight hours of service constitutes a day's work. That describes a day's work, but does not go to the matter of entitlement to work, and does not support the grievor's claim. The same must be said of Article 4, which deals with the establishment of regular relief assignments, to have five days' work per week and two consecutive rest days. On the assignment in question, the schedule was to be that of the position filled, and there is no reason to believe that was improper. Article 13.2 deals with notice to be given to regularly assigned employees whose positions are to be abolished. At the material times the grievor was not a regularly assigned employee, but was assigned to temporary vacation relief. His position was not abolished. It was a position of "Vacation relief as and when required" and on the occasions in question it was not required. What happened was quite in accordance with the bulletin.

It was contended by the Union that the posting of the job was not in compliance with Article 9.16 of the collective agreement, which calls for "mutual arrangements" with respect to vacation relief. It may be that the bulletin itself ought not to have been posted except on the agreement of the parties. This grievance, however, is not over the bulletin, but is rather a claim made pursuant to the bulletin. The grievor applied on the bulletin, was awarded the job, and worked on it for some time, apparently without complaint. The claim now is simply that there ought not to have been any "breaks" in the grievor's employment in the job. The possibility of such "breaks" however, was clear from the bulletin. It was an "as and when required" position that the grievor applied for, and that was the sort of position it was. There is nothing in the collective agreement to support the conclusion that the employee should be compensated where he is not required on the job.

For the foregoing reasons the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**
**ARBITRATOR**